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The Code of Stephan Dušan: Tsar and Autocrat of the Serbs and Greeks

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# THE CODE OF STEPHAN DUŠAN

## TSAR AND AUTOCRAT OF THE SERBS AND GREEKS

*Translated from the Old Serbian*  
*with Notes by MALCOLM BURR, D.Sc.*

### THE LAW OF THE TRUE-BELIEVING TSAR STEPHAN

IN the year 6857,<sup>1</sup> the second of the Indiction, at the feast of the Ascension of our Lord, on the twenty-first day of the month of May.

This code is established by our Orthodox Council,<sup>2</sup> by the Most Holy Patriarch Kir<sup>3</sup> Joanik and by all the archpriests and clergy,<sup>4</sup> both small and great, and by me, true-believing Tsar Stephan, and all the lords<sup>5</sup> of my Empire, both small and great. These are the enactments of these laws.

<sup>1</sup> i.e. 1349 A.D. <sup>2</sup> The word used is "sabor." <sup>3</sup> i.e. "lord," Gk. *κύριος*. <sup>4</sup> *crkoverniki*, lit. "churchmen." <sup>5</sup> *Vlastelin*, the usual word in the Code for a landowner or noble.

#### *Article 1. Of Christianity*

First concerning Christianity. In this manner shall Christianity be purged.

#### *Article 2. Of Marriage*

Lords and other people may not marry without the blessing of their own archpriest or of such cleric<sup>1</sup> as the archpriest shall appoint.

<sup>1</sup> *Duchovník*, lit. "spiritual person."

#### BIBLIOGRAPHICAL NOTE

This translation is made from the text edited by Stojan Novaković in *Zakonik Stephana Dušana*, Belgrade, 1898. This is a scholarly and full work. It contains the text in the original Old Serbian cyrillic with all the MSS. variants. It has also a long introduction which deals with the circumstances of the enactment and publication of the Code, and it has also an appendix in which the code is transliterated into modern Serbian cyrillic, and in which many of the articles are translated into modern Serbian. The editor adds many valuable historical notes, which are the basis of those given to this translation.

The Old Serbian text of the code was also published, with a parallel translation into Russian, by O. Zigelja in his *Zakonik Stephana Dušana*, St. Petersburg, 1872.

A monograph on the legislation of Stephan Dušan was published by Alexander V. Soloviev, *Zakonodarstvo Stephana Dušana*, Skoplje, 1928.

A valuable aid to the study of the Code is provided by Milan Wlajinatz, *Die agrarrechtlichen Verhältnisse des mittelaltenlichen Serbiens*, Jena, 1903. (R. R. B.)

ED. NOTE. The thanks of all concerned are due to Professor Betts for going through and revising the Translator's Notes on the clauses of the Code, and for furnishing the above Bibl. Note. The Translator writes that he has been engaged on his task off and on since 1925, and had hopes in 1939 of seeing it published, but was prevented by the war. Fortunately, when other things were destroyed, the MSS. escaped and the *Review* is now glad to publish it. Offprints of the whole will be available to interested parties at cost price.

*Article 3. Of Weddings*

No Wedding may take place without the crowning, and if it be done without the blessing and permission of the Church, then let it be dissolved.

The object of this clause is to prevent irregular unions, such as were customary among slaves and serfs in Byzantium, who simply paired by order of their lord and master. The "crowning" is an incident in the Orthodox ceremony.

*Article 4. Of the Spiritual Law*

And as his spiritual duty, every man must shew obedience and submission to his archpriest. And if any man sin before the Church or transgress any of these laws willingly or unwillingly, let him submit himself and give satisfaction to the Church : and if he listens not and disobeys and submits not to the orders of the Church, then let him be separated from the Church.

*Article 5. Of Cursing*

Bishops <sup>1</sup> shall not curse Christians for spiritual sins, but shall send twice and thrice to reproach him who has sinned. But if he will not then obey and show himself willing to carry out the order of the Church, then let him be separated.

<sup>1</sup> Lit. "consecrators," *svetitelici*.

*Article 6. Of the Latin Heresy*

And concerning the Latin heresy, any Christians who have turned to unleavened bread, let them return to Christianity. And if anyone fails to obey and does not return, let him be punished as is written in the laws of the holy fathers.

Unleavened bread (*azimistvo*, Gk. *ἄζυμος*, "unleavened") in the Sacrament is used as the differentia of the Roman Catholic Church. The word "Christian" in the sense of a member of the Orthodox Church survives to the present day in the Balkans, Roman Catholics being referred to as "Latins."

*Article 7. Of the Latin Heresy*

And the Great Church <sup>1</sup> shall appoint protopops <sup>2</sup> in all cities and market towns to bring back Christians from the Latin heresy, who have turned to the Latin faith, to give them spiritual instruction, and that every man return to Christianity.

<sup>1</sup> The expression "Great Church" refers to the patriarchate of Constantinople. The article shows that the power of Rome in the Balkans was still redoubtable, that the Tsar should allocate the duty of reconversion to the Patriarch himself, without regard to the metropolitans and bishops.

<sup>2</sup> i.e. "chief priests"; *pop* is the ordinary word for a parish priest.

*Article 8. Of Latin Priests*

And if a Latin priest convert a Christian to the Latin faith, let him be punished according to the laws of the holy fathers.

*Article 9. Of Half-believers*

And if anywhere a half-believer take a Christian woman to wife, let him be baptised into Christianity : and if he will not be baptised, let his wife and children be taken from him and let a part of the house be allotted to them, but he shall be driven forth.

The " half-believer " is a " Latin," one who is not completely Christian nor yet pagan.

*Article 10. Of Heretics*

And if any heretic be found living among Christians, let him be branded on the face and driven forth : and whoso shall harbour him, he too shall be branded.

This clause must have applied principally to the Bogomiles, the most numerous heretical sect in the Balkans. They were Manichaeans of Paulician descent, and were particularly numerous in Bosnia, where they were an organised community.

*Article 11. Of Bishops*

And bishops shall appoint priests in all parishes, in towns and in the villages : and those priests shall be those who have been blessed by the bishops spiritually to bind and to set free, and let every man hearken to them, according to the law of the Church. And those priests whom bishops have not appointed, let them be driven out and let the Church punish them according to the law.

The text of this clause is obscure. The Struga MS. is mutilated and the Prizren, generally so reliable, has an obvious error of the copyist, in repeating the word *duchovnici*, " priests," instead of *svetitelji*, " bishops," in the last phrase. The Ravanica MS. appears with *archiherei*, a late emendation which does not make sense, for the beginning of the clause expressly states that the *svetitelji*, that is bishop, shall appoint the *duchovnici*, or priests. Novaković, after discussing the manuscripts comparatively, gives a restored and probably correct version, but on p. 155 he includes the emendation of *archerei*, which is obviously wrong and does not make sense. The translation of the text is as proposed by Novaković, *Zakonik Stephana Dušana*, p. 16.

*Article 12. Of Spiritual Affairs*

And laymen <sup>1</sup> shall not judge clerical matters. And should any layman judge an ecclesiastical matter, let him pay 300 perpers. Only the Church shall judge [sp. " ecclesiastical matters "].

The influence of the ecclesiastics in the Council is here seen, protecting their privilege of exemption from the civil courts.

While the richly endowed monasteries had the power of jurisdiction over their own serfs and slaves, as had the nobles also, the Tsar protected them against the caprice of the monks by giving them the right of appeal

to the nearest *kefalija*, or prefect of a city, an imperial official. This is mentioned in one of Dušan's charters to Hilendar.

The "perper" was the Serbian money of account, like the contemporary English mark. The word is a corruption of the Greek *πνεῦρος* meaning gold "tried in the fire." It is usually regarded as the equivalent of half a ducat. According to Cibrario, in the middle of the 14th century the *perper* was then worth about six gold francs.

<sup>1</sup> The word is *kosmici*, Gk. *κοσμικοι*, worldly as opposed to spiritual men.

#### *Article 13. Of the Court of the Metropolitan*

Metropolitans, bishops and igumens may not be appointed by bribery : and from now whoso shall be appointed Metropolitan, bishop or igumen by bribery, let him be accursed, as also he who appointed him.

The numerous variants in the text of this clause indicate, as Novaković points out, how closely it touched the life of the Serbian Church and people, where simony had doubtless developed as in the west.

#### *Article 14. Of the Appointment of Igumens*

Igumens <sup>1</sup> may not be appointed without the consent of the Church : as igumens in monasteries good men shall be appointed, who will enrich the Church, the House of God.

With this clause compare a passage in the chrysobul of the Monastery of the Archangel Michael, a foundation of Dušan, which provides for the appointment of the Igumen by the Patriarch and Tsar in consultation with the brethren of the monastery.

<sup>1</sup> i.e. heads of monasteries in the Greek Church, from Gk. *ἡγούμενος*, leader.

#### *Article 15. Of Life in Monasteries* <sup>1</sup>

Igumens shall live in the monasteries <sup>1</sup> according to the law and the elders shall confer.

<sup>1</sup> The word used is *cinobija*, Gk. *κοινόβιον*, place of common life.

#### *Article 16. On the Monks' Life*

And for one thousand houses let there be fed in the monastery fifty monks.

This is a provision against the abuse of endowment, regulating the proportion of monks on the establishment to the number of households on the estates granted to the monasteries.

#### *Article 17. Of the Monks' Tonsure*

And monks and nuns who are shorn and live in their own homes shall be driven out to live in the monasteries.

#### *Article 18. Of the Monastic Tonsure*

And monks who have taken the tonsure near their native district may not live in that church, but shall go to another monastery : and food shall be given them.

The point of this clause is explained by a note in the Hodoš MS., which agrees mainly with the Prizren and Struga texts, but with an addendum

which is clearly an explanatory note by a copyist. It appears that there had been considerable abuse of the hospitality of the monasteries, especially on the part of local men joining the foundation, who wished to help their kinsmen and friends, whom they invited to the monastery as guests, often for a long visit.

*Article 19. Of Abandoning the Habit*

And a monk who abandons the habit, let him be kept in a dungeon <sup>1</sup> until he return again to obedience and let him be punished.<sup>2</sup>

<sup>1</sup> *Temnica*, i.e. dark place. <sup>2</sup> Or "do penance"—the word is *pedepsati*.

*Article 20. Of Graves*

And if any person be taken out of his grave for magic and be burnt, any village that does this shall pay a fine : and if any priest shall come to it, let his priesthood be taken from him.

*Article 21. Of the Sale of Christians*

And whoso shall sell a Christian into another—and false—faith, let his hands be cut off and his tongue cut out.

The ferocity of this clause is characteristic rather of the period than of the people. Bury has pointed out that the substitution of mutilation for execution is a chief item in the Christian humanisation of the imperial code of Byzantium, in which, in the *Ecloga* and *Procherrion*, it occurs in other clauses for several offences. Compare the penalties of mutilation prescribed in the Anglo-Saxon code. Mutilation seemed less repugnant to Christianity than execution, and it was cheaper and easier than incarceration.

*Article 22. Of the People of the Church*

And serfs <sup>1</sup> who live in the villages and hamlets of the Church, let them each go to his own lord.

In mediæval Serbia the land was held by the Tsar, the nobles or the Church. The majority of the inhabitants were under the obligation of devoting a portion of their time and labour to their lord, that is, the Tsar, the nobles or the Church, as the case may be, as provided in various clauses of the Code.

The Tsar and nobles generally exacted more service than the Church and consequently there was a general desire to migrate to ecclesiastical estates. This clause insists on the return of such migrants to their proper lord.

The words translated "villages and hamlets" are *selo* and *katun*. The former was the smaller administrative unit within the *župa* or district. The *katuns* were the summer huts of the Vlach and Albanian shepherds in the mountains.

<sup>1</sup> *L'udije vlastel'sci*, lit. "lords' people."

*Article 23. Of Transport by the Church*

Let there be no transport <sup>1</sup> by the monasteries, save when the Tsar himself is travelling, then shall the monasteries provide.

<sup>1</sup> *Ponos*. This is a reference to the custom by which the State had the right to demand means of transport for official purposes, such as the

movement of troops, journeying of officials, for the purpose of fortifications or for the royal needs. The nobles exercised the same rights to a certain extent and probably abused it. The duties consisted in the provision of beasts of burden, horses or oxen, and carts and fodder. This was a heavy burden and the Tsar and the kings in their chrysobuls expressly exempted their own foundations, reserving the right for the sovereign only. The same service of "carraginen" appears in feudal England.

*Article 24.* [No title]

And if any church official <sup>1</sup> take bribes, let him be "scattered."

The Rakovac text has a variant which is a late emendation, "if any monk take a bribe, let him be flogged and branded." This was probably inserted by a late copyist who could not understand the punishment of "scattering," especially as applied to individuals. When applied to a village, scattering (*rasuti*) meant the dispersal of the people, the burning of their houses and forfeiture of their property; when applied to individuals, only to the latter.

<sup>1</sup> *vladalač*.

*Article 25. Of the Government of the Churches*

And the Lord Tsar and the Patriarch and the Logofet <sup>1</sup> shall govern the churches and none other.

<sup>1</sup> The Logofet, from the Greek *λογοθέτης*, corresponds to the royal Chancellor in Western States.

*Article 26. Of the Exemption of the Church*

Churches situated on the lands of my Empire, my majesty releases from all services <sup>1</sup> both great and small.

<sup>1</sup> *rabota*, the general Slavonic word for customary labour service; = Gk. *ἀγγαρία*, which is a word of Persian origin which originally meant impressment as a courier.

*Article 27.* [No title]

And the Tsar's churches shall not be subject to the Great Church.

The Great Church, *Velika Crkva*, is here the chief State Church, the Patriarchate, the Archbishop's or Metropolitan Church. In Dušan's time there were two, one at Ochrida, the other at Peć.

These "tsar's churches" were, like the Greek *λάνται*, monasteries of royal foundations, privileged by charter, with complete autonomy, especially in administrative and economic matters. The Igumens of such churches had seats in the Sabor.

*Article 28. Of Feeding the Poor*

And in all churches the poor shall be fed as is written by their founders: and should any one fail to feed them, be he Metropolitan, bishop or igumen, he shall be deprived of his office.

*Article 29. Of Monastic Life*

And monks shall not live outside the monastery.



*Article 30. Of Molesting Clerics*

Henceforward no authority may molest a monk or a serf of the Church.<sup>1</sup> And whoso shall do this in the lifetime or after the death of my majesty, he shall not be blessed. And if anyone be guilty towards another let him sue him through the court and by suit according to law. And whoso shall molest or damage anyone without judgment, let him pay sevenfold.

<sup>1</sup> Lit. "man of the church," *crkovni človek*.

*Article 31. Of the Patrimony of Priests*

And priests who own land shall have their patrimonial land<sup>1</sup> and be also free; and those priests who have no patrimonial land, to them shall be given three fields according to the law: and the priest's cap is free: and if he take more, he shall do work for the churches upon that land according to the law.

From this Article it is clear that the priests were allowed to own land and did not forfeit their inheritance on entering the Church. And that in the event of a priest having no land, a ration of three fields, presumably the amount considered necessary to enable a man to keep himself, was allowed to him for maintenance out of the Church lands. The priest's cap was an outward token of such exemption.

<sup>1</sup> *Baština*, an hereditary landed property.

*Article 32. Of Ecclesiastical Persons*

Ecclesiastical persons<sup>1</sup> who administer Church villages and Church lands and drive the Church labourers<sup>2</sup> and shepherds away, those who have driven the men away, let them be bound and their land and people taken from them; and let the Church keep them until they have restored the men whom they drove away.

<sup>1</sup> Simply *ludie*, homines.

<sup>2</sup> The *meropche* or *meropci* constituted the largest class of agricultural labourers, corresponding to the A.S. *ceorls* or the villeins of Norman England. The word is connected with the Gk. *μερὸς*, a share or heritage.

*Article 33. Of the Trial of people of the Church*

People on the Church estates are judged before their own Metropolitan, or bishop or igumen for every plea. If the disputants are on the property of one church, they shall be judged before their own church: but if they are of two churches, both churches shall judge them.

*Article 34. Of Estate Labourers<sup>1</sup>*

And into my imperial estates, in Zagorje and elsewhere, the people of the Church<sup>2</sup> shall not go, neither for mowing hay nor for ploughing, nor for the vineyards, nor for any compulsory labour,<sup>3</sup> small or great. From all compulsory labour<sup>3</sup> my majesty exempts them, let them work only for the Church. And whoso shall be found to have driven men of the Church<sup>4</sup> into an imperial estate and disobeyed the law of my majesty, the goods of that owner shall be confiscated and he shall be punished.



The object of this clause is to protect the Church against the enticing away of its labour by other landowners. The Article also conferred privileges of exemption of the Church tenants from the obligations of compulsory labour.

The expression Zagorje, i.e. the district "beyond the hills," is a common place-name in Yugoslavia to-day. As here used it refers to the valley of the Lim, or perhaps of the Morava.

<sup>1</sup> *o selě mirop'skom.* <sup>2</sup> i.e. tenants of church lands. <sup>3</sup> *rabota.* <sup>4</sup> *metochija*, a word of Greek origin (μέτοικος, a settlement; or μετέχειν, to share); which meant, in the district between Prizren and Peć, a monastic estate.

### *Article 35. Of the Power of the Churches*

And my majesty has granted to the igumens their churches, that they be rulers of their goods, both mares and horses and sheep and everything else and that they may do with them whatsoever is deemed suitable and appropriate and lawful.

The Athos text adds: "and as is written in the chrysobuls of the holy founders."

### *Article 36. Of the Rule of the Church*

And let there be established communal rule<sup>1</sup> for the monks in the monasteries, according to the capacity of the monastery.

<sup>1</sup> Lit. "cenobitic law," *zakon kinovijskii.*

### *Article 37. Of the Business of Metropolitans*

Laymen may not be officials<sup>1</sup> and Metropolitans shall not send them to priests, nor may they conduct horses of the Metropolitan from priest to priest, but the Metropolitan shall send one monk with another from priest to priest, to conduct the business of the Church, that the priests may send the revenue which they have taken from their land.<sup>2</sup>

<sup>1</sup> The word used is *ek'sar'ci*, lit. "exarchs." <sup>2</sup> Again the word is *baština.*

### *Article 38. Of feeding Horses*

And from henceforward the horses and colts of my majesty shall not be sent to the churches nor to the Church villages to pasture.

A striking instance of the influence of the Church in Dušan's day, successfully claiming exemption from every form of public service, down to such details as the grazing of state horses.

### *Article 39. Of the Lords and Gentry*

And to the lords and gentry, who live within my state, both Serbs and Greeks, to whom was given land as a patrimony and in chrysobuls before my reign and who held it up to the day of this council, those patrimonies are confirmed.

This clause opens the second part of the Code, beginning with a general confirmation of the title of the nobility to their estates.

The Serbian text has two words for nobles, *vlastelin* and *vlasteličić*,

the second being a diminutive form; but what the distinction was is not known. Art. 75 recognises the right of a lesser lord to hold an entire village. Probably they were two degrees of nobility.

They were the *ἀρχοντες* and *ἀρχοντόπουλοι* of Byzantium.

A similar division of the landowners into two classes appears throughout feudal society, equally in Hungary and Poland, as in the western states.

The word translated "patrimony" is *baština*.

#### Article 40. Of Charters

And those charters and decrees <sup>1</sup> which my majesty hath granted and shall grant, and those inheritances,<sup>2</sup> are confirmed, as also those of the first Orthodox Tsars: and they may be disposed of freely, submitted to the Church, given for the soul or sold to another.

<sup>1</sup> For charters and decrees the text uses two Greek words, *χρυσόβουλλα* and *προτάγματα* in the Serbian forms *chrisovolic* and *prostag'me*.

<sup>2</sup> *baštine*.

#### Article 41. Of Lords' Hereditary Estates <sup>1</sup>

If any lord have no child, or if he have and it die, then upon his death the inheritance remains empty until there be found someone of his kin up to the third cousin, and to him shall the inheritance fall.

<sup>1</sup> i.e. the *baština* of the *vlastělin*.

#### Article 42. Of Free Hereditary Estates

And all hereditary estates are free of all works and tribute to my majesty, save that they shall pay the corn-due <sup>1</sup> and provide soldiers to fight, according to the law.

#### GENERAL NOTE

It appears that in Serbia there was no form of Salic Law nor limitation of inheritance in the male line. The word *bratočed*, lit., "brother's child," includes nieces as well as nephews. Art. 48 permits a daughter to sell her jewels and raiment inherited from her father.

Novaković suggests that there were two kinds of *baštine* or hereditary estate, one entirely free of any burden, the other carrying certain feudal duties. The former could be inherited in the female line, but the latter passed in the male line only as females could not exercise military duties. Compare Art. 174, which grants the right of free enjoyment of a *baština* provided the supply of labour be maintained. A similar distinction between the patrimonial *baština* and the feudal *pomestic*, the military fief, is to be found in 17th-century Russia, and between the *alod* and *feudum* of Germanic law.

<sup>1</sup> *Soć*; the word is the same as the Russian *socha*, which means both a two-shared plough and a ploughland. Cf. the *caruca* and the carucate of Domesday Book.

#### Article 43. Of Estate by Force

Neither the Lord Tsar, nor the King, nor the Lady Tsaritsa is free to take estates by force, nor to buy nor exchange, unless the owner freely consent.

The "King" here is the Crown Prince, on the analogy of the Byzantine "Cæsar."

*Article 44. Of Lords' Slaves*

And such slaves as a lord has, they shall be part of his estate and to his heirs for ever. Only a slave may not be given as a marriage portion.<sup>1</sup>

The *otroci* occupied the lowest rung on the social ladder; they were the chattels of their owners, probably being conquered autochthonous people, or prisoners of war or bought persons, but Art. 103 gives them certain personal rights. The word *otrok* primarily means a child; it is obsolete in Serbian, but survives in Czech as the normal word for a slave.

<sup>1</sup> *prikija*, from Gk. *πρωιδον*, earlier *πρόιξ*.

*Article 45. Of Free Estates*

And when lords and other people have hereditary churches<sup>1</sup> upon their estates, neither the Lord Tsar, nor the Patriarch, nor any bishop may subject those churches to the Great Church, but the hereditary owner<sup>2</sup> is free to appoint his own monk and to take him for ordination to the bishop in whose diocese it is, and in that church the bishop shall control only ecclesiastical affairs.

This clause shows that landowners enjoyed the privilege, at least on some properties, of advowson, subject to ordination by the bishop, whose control was strictly limited to purely ecclesiastical affairs.

<sup>1</sup> *crkvi baštine*. <sup>2</sup> *baštinik*.

*Article 46. Of Slaves*

And whoso hath slaves,<sup>1</sup> let him have them as an inheritance. And only the lord himself, or his wife, or his son, may free them and none other.

<sup>1</sup> i.e. *otroci*.

*Article 47. Of the Church*

And any lord who shall have submitted his own church to another church, hath no more control over it.

*Article 48. Of Lords and Horses*

And when a lord dies, his good horse and arms shall be given to the Tsar, and his great robes of pearls and golden girdle, let his son have them and let them not be taken by the Tsar: and if he have no son, but have a daughter, then his daughter is free to sell or give it freely.

The surrender of the horse and arms of a tenant-in-chief on his death to the prince is what in Teutonic and English law was termed "heriot." The origin of the custom is described by Tacitus in the *Germania* in his account of the relation of the "comes" to the "princeps" or "dux." On the same analogy "good horse" would be "best horse," corresponding to the "best chattel" of the English law of heriot. The horse and weapons would be conferred afresh upon his successor, if male and of age.

*Article 49. Of the Lords of the Marches*

If any foreign army come and ravish the land of the Tsar, and again return through their land, those frontier lords shall pay all, through whose territory they came.

The entrustment of frontier areas to marcher lords (markgrafen, marchiones, margraves, here *vlastěle kraištinci*) with especial rights and responsibilities, is a feature common throughout mediæval Europe. Cf. the "palatines" established by William I in Durham, Chester and Kent.

*Article 50. Of Insults to Gentlemen*

If a lord insult and shame a lesser lord <sup>1</sup> let him pay one hundred perpers. And if a lesser lord insult a greater, let him pay one hundred perpers and be beaten with sticks.

For the value of the perper, see Art. 12.

<sup>1</sup> The contrast is here, as in Art. 39, between the magnate, *vlastělin*, and the mere gentleman, the *vlastěličić*.

*Article 51. Of Presenting a Son at Court*

And when a man shall present a son or brother at Court, the Tsar shall ask him: "Shall I trust him?" And he shall say: "Trust him as myself." And if he do any evil, let him pay who hath presented him. And if he should serve as others serve in the Tsar's Palace, he shall himself pay if he do wrong.

The wording of this Article is somewhat obscure, although the meaning seems clear enough. First, we have the system of guarantee and then two classes of misdemeanour. Novaković suggests that in the first case, if it were a serious or disgraceful crime, the guarantor shall be liable, but if the son or brother commit some venial offence or breach of discipline when serving at Court, he shall himself pay the penalty.

Or it may be that he who serves the Tsar directly was not deemed to need a guarantor as much as one who was not under the Tsar's eye.

*Article 52. Of Treason*

For treason for any case brother shall not pay for brother, father for son, kinsman for kinsman, if they dwell separately in their own houses: he who hath not sinned shall not pay anything. Only shall he pay who hath sinned, he and his household.

With this clause compare No. 71, which is really a continuation of it.

The household was the smallest administrative unit in the village, collectively responsible for the fines, taxes and misdeeds of any of its members, as also for the *rabota*.

*Article 53. Of Forcing Noblewomen*

And if any lord take a noblewoman by force, let both his hands be cut off and his nose be slit. But if a commoner <sup>1</sup> take a noblewoman by force, let him be hanged. And if he take his own equal by force, let both his hands be cut off and his nose slit.

<sup>1</sup> *sebir*, the general mediæval Serbian word for anyone not of noble or gentle birth.

*Article 54. Of the Fornication of Noblewomen*

And if a noblewoman commit fornication with her man <sup>1</sup> let the hands of both be cut off and their noses slit.

<sup>1</sup> *člověk*, i.e. slave, serf or other dependent.

*Article 55. Of Insulting Lords*

And if a commoner insult a lord, let him pay one hundred perpers and be singed. And if a lord or gentleman insult a commoner, let him pay one hundred perpers.

*Article 56. Of Summoning Lords*

A lord shall not be summoned in the evening, but before dinner, and he shall be warned beforehand. And whoso shall be summoned by the officer <sup>1</sup> before dinner and shall not come by dinner time, he is at fault, and from that lord shall six oxen be taken.

<sup>1</sup> *pristav*, etymologically analogous to "assistant." The word occurs often in the Code. He was the executive official of the Court; he also executed imperial deeds of gift, for which service he received a special tax. In Art. 91, we find him placing his knowledge of law and procedure at the disposal of litigants and formally acting as advocate.

*Article 57. Of Maintenance*

And if any lord be on maintenance and do wrong to any man by rancour, waste his land, burn his house, or do any other mischief, his holding shall be taken from him and another shall not be given to him.

It was customary for the Tsar to send his nobles on official duty to regions remote from their estates and to issue authority to them to demand board, lodging and transport from the inhabitants. Cf. the similar provision against abuses committed by guardians of the estates of minors in Magna Carta.

*Article 58. Of the Death of a Lord*

If any lord who owns one village in a district <sup>1</sup> or among districts should die and any damage be done to that village by fire or other cause, then shall the whole district pay for that damage.

<sup>1</sup> *župa*—the general word for a governmental district or "county," in Hungary as well as in the Balkans. The word may be of Avar origin. Estates were often scattered, and an owner may often have held villages in various and remote districts, isolated from his main property, surrounded by other owners. Such a village on the death of the owner would be exposed to the danger of looting by neighbours. The application of the general principle of collective responsibility was the surest means of protecting, in those times, the quiet succession of the next owner and the inhabitants of the village.

*Article 59. Of Fiefs*

No man is free to sell or buy a fief, who has not an hereditary estate. And no man may subject fief-lands to the Church: and if they do so, it is not valid.

A *pronija* (πρόνοια, i.e. "provision"), which we have translated "fief," was land held by military tenure, or for some other special service, and the tenant had no right of ownership, could not sell it, nor convert it into a *baština*.

The *pronija* was, in fact, the usufruct of an estate given in lieu of salary.

This clause also forbids the alienation of a fief in mortmain, for it remained in the Tsar's *dominium* even though the feudatory had *possessio et usus*.

*Article 60. Of the Tsar's Maintenance*

Everyone shall provide for the Tsar wherever he goes. From every town to the district, from district to district. And again from district to town,

When the Tsar travelled, he was accompanied by a numerous retinue, the transport and provision of which was charged as a burden upon the region through which he was passing, as was the general custom in mediæval Europe. The units charged were the *grad* or town, the *župa* or district. The burden was always a heavy one and from Art. 23 it is seen that even the Church was not exempt.

*Article 61. Of Returning from the Army*

When a lord returns home from the Army, or any other soldier, if he be summoned to the court of justice, let him remain at home for three weeks and then let him go to court.

*Article 62. Of Summoning Lords*

A greater lord shall not be summoned without the writ <sup>1</sup> of the court, but others with the seal.

Cf. the early English parliaments to which only the greater lords were summoned by individual writ.

<sup>1</sup> *kniga* : book, writing.

*Article 63. Of Incomes*

Governors who are in the cities shall take their income according to law, and let corn and wine and meat be sold to them at one dinar which is sold to others for two ; and citizens alone may sell to him and none other.

The governor of a city was a military official appointed directly by the Tsar and responsible to him. The title is not a native word, but a Greek one, borrowed from Byzantium, *kefalija*, lit. "headman." The right of pre-emption by royal officials is common in mediæval Europe.

The dinar was the twelfth part of a perper ; the word comes from the Latin *denarius*.

*Article 64. Of the Poor*

A poor weaving woman is free, like a priest.

Novaković suggests that the meaning of this article is that a poor woman who supports herself by weaving is exempt from all kind of *rabota* as a *pop* is, according to Art. 31.

The word translated weaving woman, *kudělnica*, is from *kudelj*, hemp.

*Article 65. Of Priests*

If a priest has no land,<sup>1</sup> let three lawful fields be given him. And no priest whosoever shall depart from his lord. And if his lord do not feed

him according to the law, let him come to his archpriest and the archpriest shall tell the lord to feed the priest according to the law : and if the lord hearken not to him, then is the priest free to go where he will. If the priest own hereditary land, the lord has no power to drive him out, but he is free.

<sup>1</sup> *stas*, Gk. *στάσις*, lit. "standing."

#### *Article 66. Of Brothers*

When brothers are together in one house and someone summons them before the court, he shall dispute the case whom the court shall indicate. But if it so be that one of them be at the Tsar's court or at the court of justice and he come and say : " I will submit my elder brother to the court," then let him do so and let him not be driven by force to the court.

#### *Article 67. Of Slaves and Villagers*

Slaves and villagers who dwell together in one village shall all pay together any payment which comes due : such payment men make and work that they do, so much land let them have.

*Otroci* and *meropci*. It is to be noted that, although there was a distinct difference between the *otroci* and *meropci* (cf. *ante*, Art. 44), when the two classes lived together in one village, attention was not paid to the difference in personal rights between them. Novaković considers that this identity of procedure could occur only where the villager had no *baština*, and for that reason the difference in rights became merely nominal, since a *meropach* without a free holding was in no better position than an *otrok*, to all intents and purposes.

#### *Article 68. Of Villagers*

The law for the villager on all land. He shall work for two days in the week for the fief-holder and let him pay him one imperial perper in the year and let him cut his (lord's) hay with all his household one day and his vineyard one day ; and if there be no vineyard, let him do other work for one day. And what a villager do, let him store it all and according to the law nothing else shall be taken from him.

This important clause defines the amount of compulsory labour due from the *meropach*, and by defining limits it against abuse.

#### *Article 69. Of Commoners*

Commoners have no council. If any meet in council let his ears be cut off and let him be singed upon the face.

#### *Article 70. Of those in one House*

If there dwell in one house either brothers or father or sons, or any other, independent by bread or property but yet dwelling in one hearth, let him do service like other small people.

The expression " small people " means commoners or villagers.



*Article 71. Of the Crimes of Brothers*

Whoso commit a crime, a brother or son or kinsman, who dwell in one house, all shall pay to the lord <sup>1</sup> of the house, or hand over him who did the crime.

The principle of the collective responsibility of the kindred can be paralleled from the Anglo-Saxon codes, and is indeed a common feature of every society where the transition from the pastoral-patriarchal order to the agricultural-feudal is not complete.

<sup>1</sup> *gospodar*.

*Article 72. Of Unfree Persons*

And if any unfree person <sup>1</sup> come to the Tsar's Court, let justice be done, to each, save only to the slave of a lord.

<sup>1</sup> *nevolan*. The implication of this clause is that every *meropach* had a *locus standi* in the state courts, at least in criminal matters.

*Article 73. Of the Poor*

A poor person who cannot bring an action nor defend one, let him have an advocate to act for him.

*Article 74. Of Village Grazing*

Let village pasture with village, where one village, there also the other. Only legal enclosures and meadows may not be grazed.

*Article 75. Of County Grazing*

No district may graze its stock within another district. And if in the district there be a separate village which belongs to any lord, or to my majesty, or is a Church village, or belongs to a gentleman, that village shall graze with the rest of the county district and no man shall forbid it to so graze.

The "village" is *selo* and the "district" is *župa*.

The "legal enclosures and meadows" were presumably Crown lands and excluded, but the rest of the pasture land in the county was common land for the grazing of all the villages in the county, regardless of ownership, and the pasture lands, which were alpine or sub-alpine in character as a rule, were allotted to various counties.

*Article 76. Of Straying*

As to straying. If any man's cattle trespass on corn or a vineyard or a meadow in error, then let him pay for the damage done what the valuers assess. But if he trespass knowingly, let him pay for the trespass six oxen.

The word translated "valuers" is *duševnici*, meaning persons who estimated value by conviction, on their *duša* or soul.

*Article 77. Of Fights*

A brawl between villages, fifty perpers; but between Vlachs and

Albanians, one hundred perpers. Of the fine, one half to the Tsar and one half to the owner of the village.

The Vlachs and Albanians were the autochthonous inhabitants, reduced by the Serbs to the position of herdsmen in the mountains.

*Article 78. Of the Land and People of the Church*

If the Church have an action with any man touching land or Church people, or one show a deed of gift <sup>1</sup> and say: "I will produce the almoner," <sup>2</sup> then let no heed be paid either to the deed or to the almoner, but the case shall be tried by the law of my majesty and let the appeal be to my majesty.

<sup>1</sup> *milost*, lit. "grace." <sup>2</sup> *milostnik*, the man by whose agency the deed was granted.

*Article 79. Of Boundaries and Land*

But if villages dispute between themselves touching land or boundaries, let them sue by the law of the sainted king <sup>1</sup> from the time of his death. If anyone produce an imperial deed of gift and say: "The Lord Tsar gave me this, as my equal <sup>2</sup> held before me," if he produce the imperial deed, let it be accordingly, and let him hold it, save if it be Church land.

<sup>1</sup> The Sainted King, in the Code, always means Milutin, Dušan's grandfather.

<sup>2</sup> The word used is *drug*, of which the primary meaning is "another," "second," and which came to mean "fellow," "friend." Here it has the mediæval sense of the word "peer."

*Article 80. Of Village Boundaries*

Touching village boundaries, let both claimants bring witnesses, one a half and the other a half, according to the law. And whom the witnesses shall name, his shall it be.

Such an appeal to the knowledge of "good men of the vicinage" is common throughout early mediæval Europe; it contains in itself the germs of the universal "jury" system. A juror is merely a sworn witness.

*Article 81. Of Mountains*

The mountains which are in my territories, those which are of the Tsar shall be of the Tsar, and those which are of the Church shall be of the Church, and those of the lords shall belong to those lords in whose holding they are.

A confirmation of existing rights and arrangements, but interesting as showing once more the tripartite division of the mountain land (*planina*) which applied equally to the valleys, villages and *katuns*. From the point of view of inherited property, all land, whether populated or not, fell into one of these three categories. See Art. 93 and note.

*Article 82. Of the Vlachs*

When a Vlach or Albanian stays in a village, other herdsmen who come after them may not stay in the same village. And if any one stay by force, let him pay a fine and for the grass he has consumed.

The spring and autumn migrations to and from the mountain pastures were the occasion of much movement of Vlach and Albanian shepherds, with their families and flocks. The Serbian lords and peasants were concerned that they and their pastures should not suffer from these activities.

#### Article 83. *Of Disputes about Land*

Where in one dispute <sup>1</sup> about land two imperial deeds of gift <sup>2</sup> are produced, the property shall be his who holds the land now, up to the time of this council, and his deed shall be upheld.

<sup>1</sup> The word is *ipotes*. Gr. *ὑπόθεσις*.

<sup>2</sup> *kniga*, "book"; the O.E. "bók" had exactly this sense. The clause provides an interesting analogy to Henry II's legislation protecting occupants by the "possessory assizes," nearly two hundred years earlier.

#### Article 84. *Of the Ordeal*

After ordeal <sup>1</sup> there shall be no further trial. Whoso proves his innocence shall give no further proof to the courts, nor shall he pay costs.<sup>2</sup> There shall be neither surety<sup>3</sup> in court nor false accusation<sup>4</sup> nor imprisonment for debt,<sup>5</sup> but let every man be tried according to law.

<sup>1</sup> In addition to the trial by boiling water, which is provided here by the use of the word *kotal*, cauldron, we shall find in Art. 150 a reference to ordeal by hot iron, especially invoked in accusations of theft and brigandage, which were subject to very heavy penalties. The abolition of the ordeal by the Fourth Lateran Council in 1215 had of course no validity in Orthodox countries.

<sup>2</sup> This is the interpretation by Daničić of the word *oprava*, which is the key-word of the first sentence, and both he and Novaković interpret the clause in this way.

<sup>3</sup> *Ruka*, an arm or hand, probably contains an allusion to some old legal formality in connection with an oath, and Novaković suggests that it means a guarantor when the first trial fails to reach a decision, in which case recourse was had to compurgators on oath.

<sup>4</sup> *Opadania*; it appears to mean the bringing by the accused of a false accusation against another party in order to divert the attention of the Court.

<sup>5</sup> *Udava*, the right of a creditor to imprison his debtor, either by action of the Court, or arbitrarily to bind and hand him over to the Court.

#### Article 85. *Of Heretical Utterance*

Whoso utters heretical words,<sup>1</sup> if he be noble let him pay one hundred perpers: and if he be not noble, let him pay twelve perpers and be flogged with sticks.

<sup>1</sup> *babunska reč*, which for many years was a puzzle. It is now known that *Babuni* is another name for Bogomiles; it occurs in the so-called *Krmčija* of the time of St. Sava, where we find the heading, "On Masaljani, who are now called Bogomili—Babuni." In an old manuscript of Sveta Trojica near Plevlje, dating from between 1285 and 1291, there is an anathema against *zli eretici prokleti babunie*, "evil heretics accursed Babuni."

Micklosich suggests that the name of the Babuna Pass came from some settlement of Bogomiles in that wild district.

*Article 86. Of Homicide*

When there is a homicide, he is held guilty who provoked it, even if he be killed himself.

As killing involved a wergild, perhaps this clause implies that the kindred of the guilty party should pay the fine, while the family of the man provoked should be free of liability.

*Article 87. Of Deliberate Murder*

Where there occurs homicide without intention and violence, the fine shall be three hundred perpers. But if a man kill intentionally, both his hands shall be cut off.

*Article 88. Of Lords' Suits*

When lords are at law the loser shall give surety.<sup>1</sup>

<sup>1</sup> *jemce*, bail or security, presumably for fulfilling the judgment of the court in a civil action.

*Article 89. Of Summoning Offenders*

If a man summon an offender before the judges and then do not come to court himself, but sit at home, the party summoned, if he come at the appointed time before the judges and remain according to the law, is discharged from that debt for which he was summoned, inasmuch as he that summoned him sitteth at home.

*Article 90. Of Pledges*

Pledges, wherever they be, shall be redeemed.

*Article 91. Of Advocates*

When two are at law, if one say : " I have an advocate <sup>1</sup> here in the Tsar's court, or in the Judge's court," let him produce him. But if he seek him and find him not in the court, let him return forthwith to the court and declare : " I have not found the advocate." And if he be at dinner, let him be given time till supper : and if he be at supper, then until the next dinner hour : and if the Tsar or the court have sent that advocate upon some service, then he who hath called him is not at fault, and time shall be given him till the advocate come, to bring him to the court.

<sup>1</sup> The word is *pristav*, lit. " assistant," often it variously means " officer " or " official " (cf. Art. 56).

*Article 92. Of Horse-stealing*

If any man recognise his own horse under another man and it be in the mountains or in the wilderness, let him take him to the nearest village and hand him to the village and call upon it to deliver him to the tribunal : and if the village do not deliver him to the tribunal, let that village pay so much as the tribunal shall direct.

Horse-stealing and cattle-rustling are the characteristic crimes in a society that is still largely pastoral. Clauses like this are frequent in the Anglo-Saxon codes.

*Article 93. Of Enticing Men*

Whoso enticeth a neighbour's man into another estate, let him repay sevenfold.

Cf. The English Statute of Labourers, exactly contemporary with this Code, for a similar attempt to prevent the migration of peasants in a time of labour shortage, which in England, at least, was due to the Black Death.

*Article 94. Of Lords and Commoners*

If a lord kill a commoner, whether in a city, county or in a mountain district,<sup>1</sup> he shall pay one thousand perpers. But if a commoner kill a baron, he shall pay three hundred perpers and both his hands shall be cut off.

For the tripartite division into cities, counties and mountains, see Art. 81.

Here we have the tripartite division of the country into *gradovi*, walled cities under an imperial official the *kefaliya*, responsible directly to the Tsar and appointed by him, the *župe* or counties, with their *trgovi* or market towns and *sela*, villages, parcelled out into great estates, and the *katuni* or herdsmen's huts in the *planine* or mountains, all words with precise meaning.

<sup>1</sup> *katuni*.

*Article 95. Of Insulting and Killing Clerics*

Whoso insulteth a bishop, monk, or priest, he shall pay one hundred perpers. But if a man kill a bishop, monk or priest, let him be killed and hanged.

Apart from the killing of clerics here referred to the death sentence is provided for in the Code only in cases of a commoner who rapes the wife of a nobleman, for parricide and certain other offences.

The Serbian text has the expression "be killed and hanged," which does not specify the method of killing. The hanging probably means that the body was gibbeted after death.

*Article 96. Of Parricide*

Whoso killeth his father, mother, brother or own child, let that murderer be burnt in the fire.

This is the only reference in the Code to the penalty of burning to death.

*Article 97. Of the Lord's Beard*

Whoso shall pluck the beard of a lord or good man, both his hands shall be cut off.

Reverence for the beard, as the sign of dignity and honour, was so great that to pull it was a dire insult equivalent to murder, involving the same penalty of amputation of both hands (*v.* Art. 87). Note too that singeing the beard is a prescribed penalty.

What is meant by "good man," *dobar človek*, is uncertain; it seems to mean every respectable and honourable man from the ranks of the commoners. It may be analogous to the *legalis homo* of Anglo-Norman law.

*Article 98. Of Commoner's Plucking*

If two commoners pluck, the fine is six perpers.

*Article 99. Of Arson*

If anyone be found who has burnt a house, or a threshing floor, or straw or hay, let the village give up the burner: and if it do not give him up, then let that village pay what the burner would have suffered and paid.

*Article 100. Of Arson*

And if anyone outside a village burn a threshing-floor or hay, let the neighbourhood pay or hand over the burner.

These two clauses go together, but the texts of No. 99 are confused and even contradictory, with such obvious errors as, "if he be not found, let the village give him up." In any case, the general meaning is clear, for the clauses insist once more on the principle of collective responsibility, the village in the first instance, the neighbourhood in the second. *Okolina*, neighbourhood, does not appear to have any precise significance, as do the words *selo*, village, and *župa*, district or county.

Nothing is said about the punishment in the more authentic texts, but those of the Athos group specify that he shall be burned alive if found, and that if he be not found, the village pay what he would have suffered and paid. The two Serbian words meaning suffered and paid, *patil i platil* are sufficiently alike to render confusion easy; the first is omitted from the Struga text, which is the more authentic.

(To be concluded)